

§ 76.7

(f) Filing of pleadings, papers or other documents shall be deemed completed upon delivery to the Judge assigned to the case or the Judge's designee.

§ 76.7 Content of pleadings.

(a) Every pleading shall contain a caption setting forth the statutory provision under which the proceeding is instituted, the title of the proceeding, the docket number assigned by the Judge, the names of all parties, and a designation of the type of pleading or paper (e.g., complaint, motion to dismiss). The pleading shall be signed and shall contain the address and telephone number of the party or person representing the party. The pleadings should be typewritten when possible on standard-size ($8\frac{1}{2} \times 11$) paper. Legal size ($8\frac{1}{2} \times 14$) paper will not be accepted, except upon approval by the Judge.

(b) Illegible documents, whether handwritten, typewritten, photocopied, or otherwise, will not be accepted. Papers may be reproduced by any duplicating process, provided all copies are clear and legible.

(c) All documents presented by a party in a proceeding must be in English or, if in a foreign language, accompanied by a certified translation.

§ 76.8 Time computations.

(a) *Generally.* In computing any period of time under this part or in an order issued hereunder, the time begins with the day following the act, event, or default requiring service, and includes the last day of the period unless it is a Saturday, Sunday, or legal holiday observed by the federal government, in which case the time period includes the next business day. When the period of time prescribed is eleven (11) days or less, intermediate Saturdays, Sundays, and holidays shall be excluded in the computation.

(b) *Date of entry of orders.* In computing any period of time involving the date of the entry of an order, the date of entry shall be the date the order is signed by the Judge.

(c) *Computation of time for service by mail.* Whenever a party has a right or is required to do some act or take some action within a prescribed period after service of a pleading, paper, or notice

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and the pleading, paper, or notice is served upon the party by mail, three (3) days shall be added to the prescribed period.

§ 76.9 Responsive pleading—answer.

(a) *Time for answer.* A respondent shall file and serve on the United States Attorney having jurisdiction over the matter an answer within thirty (30) days after the service of a complaint.

(b) *Default.* Failure of the respondent to file and serve an answer within the time provided shall be deemed to constitute a waiver of his or her right to appear and contest the allegations of the complaint. In such cases, the Judge may enter a judgment by default.

(c) *Answer.* Any respondent contesting any material fact alleged in a complaint, or contending that he or she is entitled to judgment as a matter of law, shall file an answer in writing.

(1) The answer shall include a statement of the facts supporting each affirmative defense.

(2) The answer shall include a statement that the respondent admits, denies, does not have and is unable to obtain sufficient information to admit or deny each allegation, or that an answer to the allegation is protected by a privilege, including the privilege against self-incrimination.

(3) A statement of lack of information or a statement that the answer to the allegation is privileged shall have the effect of a denial.

(4) Any allegation not denied shall be deemed to be admitted.

(d) *Reply.* A complainant may file a reply responding to each affirmative defense arrested if the Judge, pursuant to 28 CFR 76.10, so provides.

(e) *Amendments and supplemental pleadings.* If it will facilitate resolution of the controversy, the Judge may, upon such conditions as are necessary to avoid prejudicing the public interest and the rights of the parties, allow appropriate amendments to complaints and other pleadings at any time prior to the issuance of the Judge's order based on the complaint. When issues not raised by the pleadings are reasonably within the scope of the original complaint and are tried by express or implied consent of the parties, they

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shall be treated in all respects as if they had been raised in the pleadings, and such amendments may be made as necessary to make the pleadings conform to the evidence. The Judge may, upon reasonable notice and such terms as are just, permit supplemental pleadings setting forth transactions, occurrences, or events which have happened or new law promulgated since the date of the pleadings and which are relevant to any of the issues involved.

§ 76.10 Motions and requests.

(a) *Generally.* Any application for an order or any other request shall: be made by motion which shall be in writing (unless the Judge in the course of an oral hearing or appearance consents to accept such motion orally), state with particularity the grounds therefor, and set forth the relief or order sought. Motions or requests made during the course of any oral hearing or appearance before a Judge may be stated orally or in writing and made part of the transcript. All parties shall be given reasonable opportunity to respond or object to the motion or request.

(b) *Responses to motions.* Within ten (10) days after a written motion is served, or within such other period as the Judge may fix, the other party to the proceeding may file a response to the motion, accompanied by such affidavits or other evidence as the party desires to rely upon. Unless the Judge provides otherwise, no reply to a response shall be filed.

(c) *Oral arguments or briefs.* No oral argument will be heard on motions unless the Judge otherwise directs. Written memoranda or briefs may be filed with motions or responses to motions, stating the points and authorities relied upon in support of the position taken.

§ 76.11 Notice of hearing.

(a) When the Judge receives the complaint and answer, the Judge shall cause to be served a Notice of Hearing upon the parties in the manner prescribed by 28 CFR 76.6(d).

(b) Such notice shall include:

(1) The time and place and nature of the hearing. In fixing the time and place of the hearing, the Judge will at-

tempt to minimize the costs to the parties;

(2) The legal authority and jurisdiction under which the hearing is to be held;

(3) The description of the procedures for the conduct of the hearing;

(4) A notice that the respondent party may waive the right to an oral hearing and request that the matter be determined on written motions and written submission of the evidence; and

(5) Such other matters as the Judge deems appropriate.

§ 76.12 Prehearing statements.

(a) At any time prior to the commencement of the hearing, the Judge may order any party to file a prehearing statement of position.

(b) A prehearing statement shall state the name of the party on whose behalf it is presented and shall briefly set forth the following matters, unless otherwise ordered by the Judge:

(1) Issues involved in the proceedings and whether the respondent requests an oral hearing;

(2) Facts stipulated;

(3) Facts in dispute;

(4) Witnesses, except to the extent that disclosure would be privileged, and exhibits by which disputed facts will be litigated;

(5) A brief statement of applicable law;

(6) The conclusions to be drawn;

(7) The estimated time required for presentation of the party's case; and

(8) Any appropriate comments, suggestions, or information which might assist the parties or the Judge in preparing for the hearing or otherwise aid in the disposition of the proceeding.

§ 76.13 Parties to the hearing.

The parties to the hearing shall be the United States of America and the respondent.

§ 76.14 Separation of functions.

An employee or an agent of the Department who is or was engaged in investigative or prosecutive functions for or on behalf of the United States in a case may not participate in the decision of that case.